

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

NEW PENN FINANCIAL, LLC d/b/a SHELLPOINT MORTGAGE SERVICING)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:18-CV-000041
)	
DANIEL KANE, THERESA M. KANE, and ROWLAND PARKER)	
)	
)	
Defendant.)	
)	

MOTION TO DISMISS

Defendants **DANIEL KANE** and **THERESA M. KANE**, (the “Kanes”), by and through their undersigned counsel, herewith move the Court to dismiss all claims asserted against them in the Complaint filed July 6, 2018 by plaintiff **NEW PENN FINANCIAL, LLC d/b/a SHELLPOINT MORTGAGE SERVICING** (“Shellpoint”) pursuant to F.R.Civ.P. 12(b)(5) for insufficient service of process. As grounds, the Kanes rely upon the attached Declaration of Daniel Kane, which establishes that Shellpoint failed to effect service of process of the summons and complaint, as required pursuant to F.R.Civ.P. 4(e)(2)(B), “at an individual’s dwelling or usual place of abode with someone of suitable age and discretion who lives there.”

The Kanes also state that on December 11, 2018, they forwarded a draft stipulation to Shellpoint’s counsel and offered to waive service of process in exchange for a stipulation for an extension until after the holidays to respond to the Complaint. Shellpoint did not respond by the deadline for response to its Complaint, making it necessary to expend time and resources to prepare and file this motion, and so the Kanes are withdrawing their offer to waive service of process.

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Respectfully submitted,

DATED: December 17, 2018

By: /s/ J. Daryl Dodson, Esq.
J. Daryl Dodson, Esq. (V.I. Bar No. 241)
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Attorneys for Defendants Daniel Kane and
Theresa M. Kane

CERTIFICATE OF SERVICE

I certify that on December 17, 2018, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send a notification of such filing to:

Matthew R. Reinhardt, Esq.
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Attorneys for Plaintiff New Penn Financial, LLC

/s/ J. Daryl Dodson